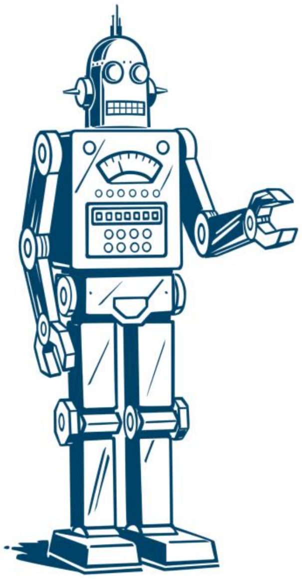
The Building a Better Fiduciary Series



Between the new Fiduciary Rule and media coverage of lawsuits citing a breach of Fiduciary duty, being a Fiduciary may seem like nothing short of a nightmare. Don't let it cause you to short circuit! ***It is time to build a better Fiduciary.***

Step by step, we are giving you the tools you need to reach your Fiduciary best. Understand your role, follow simple procedures and best practices, learn how your service providers can better serve you, and improve outcomes for your Participants. After all, knowledge is power.

Get started today and ***Build a Better Fiduciary***.

Part Three. Operational Duties

When you establish an employer-sponsored retirement plan, you assume certain duties pertaining to Plan Operation. A vital step in *Building a Better Fiduciary* is understanding what these duties require of you and how they affect Participant outcomes.

Employee Eligibility & Enrollment

Plan eligibility should be determined using the definition of an "eligible employee" found in the Plan Document. <u>Each employee who receives a Form W-2 should be considered an eligible employee unless they can be properly excluded by plan provisions</u>. To minimize the risk of excluding an eligible employee, ensure accuracy of employee data including date of birth, date of hire, and hours of service. For a Plan to maintain tax preferential treatment, eligibility must follow certain standards. Generally, an employee should be eligible at or before reaching age 21 with at least 1 year of service.

Upon eligibility, employees should receive a summary of Plan provisions, a fund line-up with applicable fee and performance information, and enrollment forms to elect their salary deferral. Participant elective deferrals are subject to an annual limit. *For 2015-2017, their limit is $18,000 per year with a catch-up contribution limit of $6,000 if age 50 or older*. Remember, Plan Enrollment is also your first chance at participant education. Participants should be provided with the information they need to make the most of participation in their Plan. Participant education at enrollment should include information about the basics of investing, tax deferment, risk tolerance, and saving for retirement.

Participant Elections & Timely Deferrals

As a Fiduciary, Plan Sponsors are responsible for ensuring that the appropriate amount of compensation is deferred based on a participant's election and deposits are made timely. By law, deposit of employee elective deferrals must be made on the earliest date the funds can be segregated from the employer's general assets, but not later than the 15th business day of the month following the month in which the contributions were deducted from the participant's compensation.

Employer Contributions

Do your Plan provisions include an employer match? What about a profit sharing contribution? If these employer contributions are specified in your Plan Document, ensure you follow the procedures as they are written. Review the Document to determine the allocation requirements, matching contribution formula, and definition of compensation to use.

It is important to remember that some employees may be eligible for discretionary or non-elective contributions even if they choose not to make an elective deferral.

Benefit Distributions

In most defined contribution plans, a distribution is permitted if the participant reaches age 59½, terminates employment by death, disability, retirement, or other severance, or suffers a hardship. The Plan Document should clearly define a distributable event and the form of benefit such as a lump sum or set payment over a period of time. Required Minimum Distributions (RMDs) may be required to begin once the participant reaches age 70½.

In a defined benefit pension plan, the Plan Document should define the normal retirement age when a participant is eligible to receive, or begin receiving, the full accrued benefit.

Hardship Distributions & Loans

It is a Fiduciary decision to allow hardship distributions and/or loans in the Plan. If hardship distributions are permitted, the Plan Document will contain the procedures and necessary criteria to be considered. A hardship distribution should only be made from a Participant's account if there is an immediate and heavy financial need. The distribution is limited to the amount necessary to satisfy the financial need. Need should be based on Plan terms as well as all relevant factors and circumstances. The Plan may limit hardship reasons to those the IRS has specified as displaying an immediate and heavy financial need. Among these is the purchase or repair of primary residence, prevention of eviction or foreclosure, and unreimbursed medical care expenses for the employee, their spouse, or dependents.

The Plan Document may also allow for participant loans. If permitted, the Fiduciary is responsible for ensuring that a Participant borrows no more than the lesser of 50% of his or her vested balance or $50,000. Generally, loans must be repaid within 5 years with payments made quarterly at minimum.

Plan Document Updates & Amendments

Your Plan Document establishes your Plan and supports Plan operations. It must be in compliance with Internal Revenue Code. When laws change, the Document must be amended to reflect applicable changes by a specific deadline. Keep signed, dated copies of all plan documents and any amendments for your records. A failure to amend the Plan Document on a timely basis jeopardizes the Plan's tax-qualified status.

As a Fiduciary, it is vital to ensure documents are signed in a timely manner.

Annual Compliance Testing

Under ERISA's Prudent Man Standard of Care, a Fiduciary is required to act solely in the best interest of participants for the exclusive purpose of providing benefits to them. This includes all participants of a Plan. The Plan cannot benefit certain employees or employee groups more than others. Annual compliance testing is required for traditional defined contribution plans to ensure that the Plan does not disproportionately benefit Highly Compensated Employees (HCEs), such as owners and managers, compared to Non-Highly Compensated Employees. Tests include the Actual Deferral Percentage (ADP) test and Actual Contribution Percentage (ACP) test. A Top-Heavy test is required to ensure that the account values of Key Employees do not represent more than 60% of total Plan assets. Other annually required tests include testing for coverage and 402(g) limit compliance.

Filing Annual Reports

Annually, employer-sponsored retirement plans must file a Form 5500 series return with the Department of Labor (DOL). The Form 5500 serves as the annual report for employee benefit plans to report their financial condition, investments, and operations to the DOL, IRS, and Pension Benefit Guaranty Corporation. The Form 5500 should be filed electronically using the EFAST2 system no later than the last day of the seventh month after the plan year's end unless an extension is filed. For a calendar year plan, the due date is July 31st or October 15th if an extension is filed and approved.

A failure to file the Form 5500 series return can lead substantial monetary penalties from both the IRS and DOL. The IRS imposes a fine of $25 per day up to a maximum of $15,000 while the DOL penalty is $1,100 each day with no maximum.

Learn more about the Form 5500 series return in the IRS' Form 5500 Corner.

Maintaining Internal Controls

Internal controls serve as checks and balances for your Plan during operation to detect and prevent errors. Consider periodically comparing participant deferral elections to amounts deducted from wages, verifying certain demographic data such as marital status, or ensuring that participants are receiving required minimum distributions. Having strong internal controls in place will help to mitigate the chance that errors occur.

Plan Operations Review

As part of an annual Fiduciary Review, conduct a thorough analysis of the Plan operations listed above. Ensure that all policies and procedures are being strictly followed as dictated by the Plan Document. It is also important to identify changes in staff, especially those individuals serving as Fiduciaries. The annual review is a great time to confirm that everyone is fully aware of their role and operating by the Plan Document.

Timely Correction of Plan Failures

If errors occur in Plan operation, timely correction is vital to maintain your Plan's tax-qualified status. Consult the Retirement Rescue section of our website to identify correction methods for common plan mistakes. Generally, the Employee Plans Compliance Resolution System, EPCRS, is used to correct errors in employee benefit plans.

The Bottom Line

When an employer-sponsored retirement plan is established, the Plan Sponsor takes on specific duties regarding the operation of the Plan. These responsibilities are vital to both the tax-qualified status of the Plan and improving Participant outcomes.

It's time to Build a Better Fiduciary.